



CITY COUNCIL

CITY AND COUNTY OF HONOLULU

HONOLULU, HAWAII 96813-3077

COMMITTEE ON PUBLIC SAFETY AND WELFARE

Voting Members:

Tommy Waters, Chair
Heidi Tsuneyoshi, Vice Chair
Carol Fukunaga
Joey Manahan
Ron Menor

AGENDA

REGULAR MEETING
CITY COUNCIL CHAMBER
THURSDAY, NOVEMBER 14, 2019
2:30 P.M.

SPEAKER REGISTRATION

Persons wishing to testify are requested to register by 2:30 p.m. as follows:

- a. On-Line at <http://www.honolulu.gov/ccl-testimony-form.html>;
- b. By faxing to 768-3826 your name, phone number and the agenda item;
- c. By filling out a registration form in person; or
- d. By calling 768-3801.

Persons who have not registered to testify will be given an opportunity to speak on an item following oral testimonies of the registered speakers.

Each speaker is limited to a **one-minute** presentation.

WRITTEN TESTIMONY

Written testimony may be faxed to 768-3826 or transmitted via the internet at <http://www.honolulu.gov/ccl-testimony-form.html> for distribution at the meeting.

If submitted, written testimonies, including the testifier's address, e-mail address and phone number, will be available to the public on both the City Council's pilot website: www.honolulucitycouncil.com as well as the City's DocuShare Website.

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MATERIALS AVAILABLE FOR INSPECTION

Meeting materials ("*board packet*" §92-7.5, HRS) are available for public inspection at the Council Information and Records Section's service window at Room 202 in Honolulu Hale (530 S. King St.).

Accommodations are available upon request to persons with disabilities, please call 768-3801 or send an email to guehara@honolulu.gov at least three working days prior to the meeting.

The meeting is viewable by: (1) internet live streaming through www.honolulucitycouncil.com and http://olelo.granicus.com/MediaPlayer.php?publish_id=92; (2) televised live broadcast on Olelo TV Channel 54; or (3) after the meeting, viewable at <http://www.honolulucitycouncil.tv/>. Copies of older meeting videos may be requested by calling the City Clerk's Office at 768-5822, charges may apply.

FOR ACTION

1. **RESOLUTION 19-277 – AIR CONDITIONING AT ALL OAHU PUBLIC SCHOOLS.** Urging the Legislature of the State of Hawaii to appropriate funds for the electrical assessment and the installation of air conditioning at all Oahu public schools.
2. **BILL 40 (2019) – RELATING TO PLASTIC.** Addressing the provision of certain single-use plastic goods and plastic bags. (Bill passed second reading and public hearing on 9/4/19; Committee amended Bill to a CD1 version (OCS2019-1157/10/24/2019 1:59 PM on 10/24/19; the CD1 version was re-referred to Committee on 11/1/19)

CD1 TO BILL 40 (2019) – (Submitted by Councilmember Manahan) The CD1 (OCS2019-1157/10/24/2019 1:59 PM) makes the following amendments:

- A. In SECTION 1 of the bill ("Purpose and Findings"), revises the general comments and findings of the Council.
- B. In SECTION 2 of the bill, adds a new definition of "Plastic" to ROH Section 9-9.1 ("Definitions") to read as follows:

"Plastic" means any material made of fossil fuel-derived or petrochemical polymeric compounds and additives that can be shaped by flow.
- C. In SECTION 2 of the bill, amends the definitions of "Plastic checkout bag" and "Plastic film bag" in ROH Section 9-9.1 ("Definitions") to limit existing exclusions to:
 - (A) Handle-less plastic bags used by customers inside a business to package loose items, such as fruits, vegetables, nuts, ground coffee, grains, candies, or small hardware items;
 - (B) Bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;
 - (C) Newspaper bags for home newspaper delivery;
 - (D) Laundry, dry cleaning, or garment bags
 - (E) Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;
 - (F) Bags used to contain live animals, such as fish or insects sold in pet stores; and

- (G) Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level; provided that this exemption shall be limited to one bag per customer.

Exclusions (A) and (D) have been modified from the "as introduced" version.

- D. In SECTION 4 of the bill, adds new definitions of "Business," "Expanded polystyrene," "Expanded polystyrene food service product," and "Plastic," amends the definition of "Plastic service ware," "Single-use," and "Utensils," and removes the definitions of "Chlorofluorocarbons" or "CFCs," and "Polystyrene foam container" in ROH Section 41-27.1 ("Definitions").
- E. In SECTION 5 of the bill, amends ROH Section 41-27.2 ("Ban on use of polystyrene foam containers") to read as follows:

"Sec. 41-27.2 ~~[Ban]~~ **Restriction on [use of polystyrene foam containers.] non-compliant food service ware.**

- (a) ~~[Except if]~~ Unless exempted under Section 41-27.3, ~~[from January 1, 1990,]~~ no food vendor or business shall sell or serve prepared food or beverages in any expanded polystyrene ~~[foam container]~~ food service product. ~~[which is manufactured with the use of or contains chlorofluorocarbons. The department may require a food vendor, supplier, or distributor to furnish a written statement from the manufacturer or supplier of the container used by the food vendor, indicating that use of the container is not prohibited.]~~
- (b) Unless exempted under Section 41-27.3, no food vendor or business shall sell or provide single-use plastic service ware to customers.
- (c) [Except if] Unless exempted under Section 41-27.3, ~~[from January 1, 1990,]~~ no food packager shall package meat, eggs, bakery products, or other food in any expanded polystyrene ~~[foam container]~~ food service product. ~~[which is manufactured with the use of or contains chlorofluorocarbons. The department may require the manufacturer or supplier of the container used by the food packager to furnish a written statement from the manufacturer of the packaging, indicating that use of the container is not prohibited.]~~

- F. In SECTION 6 of the bill, amends ROH Section 41-27.3 ("Exemptions") to read as follows:

"Sec. 41-27.3 Exemptions.

- (a) ~~[The department may exempt a food vendor or food packager from compliance with the prohibition of Section 41-27.2 until December 31, 1990.]~~ The department may grant an exemption from compliance with the prohibitions of Section 41-27.2 upon application and ~~[a showing by the applicant]~~ the provision of sufficient evidence that compliance with the prohibition would cause undue hardship. "Undue hardship" ~~[shall]~~ will be construed to include, but not be limited to[:
- (a) ~~Situations],~~ situations where there are no acceptable alternatives to packaging with expanded polystyrene [foam containers] food service products or providing single-use plastic service ware to customers, for reasons ~~[which]~~ that are unique to the applicant[; or
- (b) ~~Situations where compliance with the prohibition would deprive a person of a legally protected right or where the product containing CFCs was purchased prior to the effective date of the ordinance codified in this article].~~
- (b) Disposable flexible plastic drinking straws may be provided, upon request, to customers for whom flexible non-fossil-fuel-based straws are unsuitable due to medical or physical conditions. Otherwise, straws must be fossil-fuel free or designed to be reusable.
- (c) Prepackaged food products that are outside of a business' sphere of control, such as children's juice boxes packaged and sold with single-use plastic straws, soup or noodles packaged with expanded polystyrene that has been filled and sealed prior to receipt by the business, and single-use plastic condiments packaging, are exempt from compliance with the prohibitions of Section 41-27.2."

- G. Amends the bill's effective date to January 1, 2021.
- H. Makes miscellaneous technical and nonsubstantive amendments.

[PROPOSED CD1 TO BILL 40 \(2019\)](#) (Submitted by Councilmember Waters) - The CD1 (OCS2019-1223/11/8/2019 4:33 PM) makes the following amendments:

The **PROPOSED CD1** makes the following amendments:

- A. In SECTION 1 of the bill ("Purpose and Findings"), revises the general comments and findings of the Council.
- B. In SECTION 2 of the bill, adds a new definition of "Plastic" to ROH Section 9-9.1 ("Definitions") to read as follows:
"Plastic" means any material made of fossil fuel-derived or petrochemical polymeric compounds and additives that can be shaped by flow.
- C. In SECTION 2 of the bill, amends the definitions of "Plastic checkout bag" and "Plastic film bag" in ROH Section 9-9.1 ("Definitions") to limit existing exclusions to:
 - (A) Handle-less plastic bags used by customers inside a business to package loose items, such as fruits, vegetables, nuts, ground coffee, grains, candies, or small hardware items;
 - (B) Bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;
 - (C) Newspaper bags for home newspaper delivery;
 - (D) Laundry, dry cleaning, or garment bags
 - (E) Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;
 - (F) Bags used to contain live animals, such as fish or insects sold in pet stores; and
 - (G) Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level; provided that this exemption shall be limited to one bag per customer.
Exclusions (A) and (D) have been modified from the "as introduced" version.
- D. In SECTION 4 of the bill, adds new definitions of "Business," "Disposable," "Grab-and-go," "Plastic," "Plastic food ware," "Polystyrene foam," "Polystyrene foam food ware," and "Shelf stable," amends the definitions of "Customer," "Plastic service ware," "Prepared food," and "Utensils," and

repeals the definitions of "Biodegradable," "Chlorofluorocarbons" or "CFCs," "Food packager," "Food vendor," "Nonprofit food provider," "Polystyrene foam container," "Restaurant," and "Retail food vendor" in ROH Section 41-27.1 ("Definitions").

- E. In SECTION 5 of the bill, amends ROH Section 41-27.2 ("Ban on use of polystyrene foam containers") to: prohibit sale, service or provision of polystyrene foam food ware as of January 1, 2021; prohibit sale or provision of disposable plastic service ware as of January 1, 2021; prohibit sale, service or provision of disposable plastic food ware as of January 1, 2022; and prohibit the sale or provision of polystyrene foam food ware at City-associated facilities and events. The revisions read as follows:

"Sec. 41-27.2 ~~[Ban]~~ **Restriction on [use of polystyrene foam containers.] non-compliant food service ware.**

- (a) ~~[Except if]~~ Unless exempted under Section 41-27.3, from ~~[January 1, 1990]~~ January 1, 2021, no ~~[food vendor]~~ business shall sell, serve, or provide any polystyrene foam ~~[container]~~ food ware to customers. ~~[which is manufactured with the use of or contains chlorofluorocarbons. The department may require a food vendor, supplier, or distributor to furnish a written statement from the manufacturer or supplier of the container used by the food vendor, indicating that use of the container is not prohibited.]~~
- (b) Unless exempted under Section 41-27.3, from January 1, 2021, no business shall sell or provide disposable plastic service ware to customers.
- (c) Unless exempted under Section 41-27.3, from January 1, 2022, no business shall sell, serve, or provide disposable plastic food ware to customers.
- (d) ~~[Except if]~~ Unless exempted under Section 41-27.3, from ~~[January 1, 1990]~~ January 1, 2021, no ~~food packager~~ shall ~~package meat, eggs, bakery products, or other food~~ polystyrene foam ~~[container]~~ food ware ~~[which is manufactured with the use of or contains chlorofluorocarbons. The department may require the manufacturer or supplier of the container used by the food packager to furnish a written statement from the manufacturer of the packaging, indicating that use of the container is not prohibited.]~~ " shall not be sold, used, or provided, or offered for sale or use at any city facility, city-authorized concession, city-sponsored or city-permitted event, or city program.

- F. In SECTION 6 of the bill, amends ROH Section 41-27.3 ("Exemptions") to: specify terms and considerations for the "undue hardship" exemption; include an exemption under proposed subsection (b) specific to disposable flexible plastic drinking straws, for hospitals, healthcare facilities and agencies; include exemptions under proposed subsection (c) for packaging for shelf stable foods and beverages, grab-and-go foods and beverages, and catered foods and beverages, contained within disposable plastic food ware; include an exemption under proposed subsection (d) for raw meat, poultry, seafood, and eggs; and include an exemption under proposed subsection (e) for situations deemed by the City administration to be an emergency. The revisions read as follows:

"Sec. 41-27.3 Exemptions.

- (a) ~~[The department may exempt a food vendor or food packager from compliance with the prohibition of Section 41-27.2 until December 31, 1990.]~~ The department may grant an exemption from compliance with the prohibitions of Section 41-27.2 upon application and [a showing by the applicant] the provision of sufficient evidence that compliance with the prohibition would cause undue hardship. Exemptions may be granted for a specified term of up to two years, and may be subsequently renewed for a specified term of up to two years, provided that during the term of the exemption, diligent efforts are made by the business to become compliant. "Undue hardship" ~~[shall]~~ will be construed to include, but not be limited to[:
- (a) ~~Situations], situations~~ where there are no acceptable alternatives to providing expanded polystyrene [foam containers] food ware, disposable plastic service ware or plastic food ware to customers, for reasons ~~[which]~~ that are unique to the applicant[; or
- (b) ~~Situations where compliance with the prohibition would deprive a person of a legally protected right or where the product containing CFCs was purchased prior to the effective date of the ordinance codified in this article].~~ Factors relevant to determining whether acceptable alternatives exist include, but are not limited to, the comparative size, performance, and utility, of any available alternative.
- (b) Disposable flexible plastic drinking straws may be provided, upon request, to customers for whom flexible non-fossil-fuel-based straws

are unsuitable due to medical or physical conditions. Otherwise, straws must be fossil-fuel free or designed to be reusable.

The following entities are exempt from compliance with the prohibitions of Section 41-27.2(b), specific to disposable flexible plastic drinking straws:

- (1) A "hospital" as defined under Hawaii Administrative Rules section 11-93-2;
 - (2) A "nursing facility" as defined under Hawaii Administrative Rules section 11-94.1-2;
 - (3) An "assisted living facility" as defined under Hawaii Administrative Rules section 11-90-2;
 - (4) An "adult residential care home" ("ARCH") and "expanded ARCH" as defined under Hawaii Administrative Rules section 11-100.1-2;
 - (5) A "hospice service agency" as defined under Hawaii Revised Statutes section 321-15.63(b);
 - (6) A "hospice home" as defined under Hawaii Revised Statutes section 321-15.1;
 - (7) A "home health agency" as defined under Hawaii Administrative Rules section 11-97-1; and
 - (8) A "home care agency" as defined under Hawaii Administrative Rules section 11-700-2."
- (c) The following shall be exempt from compliance with the prohibitions of Section 41-27.2:
- (1) Packaging for shelf stable foods and beverages contained within disposable plastic food ware;
 - (2) Packaging for grab-and-go or catered foods and beverages contained within disposable plastic food ware;

- (3) Packaging for raw meat, poultry, seafood, and eggs that have not been further processed or provided for consumption without further food preparation; and
- (4) Packaging in any situation deemed by the City to be an emergency requiring the immediate preservation of life, health, property, safety, or essential public services. This exemption shall be in place until the emergency has ceased or the mayor has determined the exemption is no longer applicable to the situation."

G. Inserts a new SECTION 7 of the bill, requiring plastic service ware to be provided upon request or affirmative response by the customer, and for the City administration to engage in an education and outreach campaign to facilitate implementation of this measure, by revising ROH Section 41-27.4 ("Violation - Penalty") to read as follows:

"Sec. 41-27.4 ~~[Violation — Penalty.]~~ Plastic service ware upon request.

- (a) ~~[It is unlawful to violate Section 41-27.2.] A business may only provide or distribute disposable food service ware for prepared food or beverage upon the request or affirmative response of a customer or person being provided the prepared food or beverage, or in a self-service area or dispenser.~~
- (b) ~~[Each violation shall be punishable by a fine as follows:~~
 - (1) ~~A fine not exceeding \$250.00 for the first violation within a one-year period; or~~
 - (2) ~~A fine not exceeding \$500.00 for the second and each subsequent violation within the one-year period from the first violation.~~

The "one-year period" shall be deemed to commence on the date of conviction for the first violation and end on the same day and month one year later.]The city administration shall engage in an education and outreach campaign in coordination with community and business partners to facilitate implementation of this article."

Renumbers successive SECTIONS accordingly

- H. In renumbered SECTION 8 (previously SECTION 7) of the bill, amends ROH Section 41-27.5 ("Enforcement") to: remove reference to enforcement of the article by the Honolulu Police Department and use of summons or citations for enforcement; inserts civil enforcement methods under proposed subsections (b) and (c) that are similar to enforcement methods within the City's plastic bag ordinance under ROH Section 9-9.3. The revisions read as follows:

"Sec. 41-27.5 Enforcement[-], penalties and injunctive relief.

- (a) ~~[There shall be provided for use by an officer or employee of the city duly authorized to issue a summons or citation or any police officer a form of summons or citation for use in citing violators of Section 41-27.2, which does not provide for the physical arrest of such violators. The form and content of the summons or citation shall be as adopted or prescribed by the administrative judge of the district court, shall be printed on a form commensurate with the form of other summons or citation used in modern methods of arrest, and so designed to include all necessary information to make the same valid within the laws and rules of the State of Hawaii and the City and County of Honolulu.~~
- (b) ~~In every case, when a citation is issued, the original shall be given to the violator; provided, that the administrative judge of the district court may prescribe that the violator be given a carbon copy of the citation and provide for the disposition of the original and any other copies. Every citation shall be numbered, and each carbon copy shall bear the same number as its original.~~
- (c) ~~Enforcement of this article shall also be under the jurisdiction of the Honolulu police department. Enforcement and administration of this article [shall be] is under the jurisdiction of the department [of public works.] of environmental services.~~
- (b) Any business violating any provision of this article or any rule adopted pursuant to this article shall:
- (1) Be ordered to discontinue the distribution or sale of items prohibited by this article; and

- (2) If continuing the distribution despite the order, be subject to a civil fine of not less than \$100 nor more than \$1,000 for each day of violation.
 - (c) The director of environmental services may institute a civil action in any court of competent jurisdiction for injunctive or other relief to correct or abate violations of this article or any rule adopted pursuant to this article, to collect administrative penalties, or to obtain other relief."
- I. Inserts a new SECTION 9 of the bill, requiring the Director of Environmental Services to adopt rules to implement, administer and enforce this article, by revising ROH Section 41-27.6 ("Rules") to read as follows:

"Sec. 41-27.6 Rules.

The ~~[department may promulgate reasonable and necessary rules to administer or enforce this article. Rules shall be promulgated in accordance with HRS Chapter 91.]~~ director of environmental services shall adopt rules pursuant to HRS Chapter 91 regarding the implementation, administration and enforcement of this article."

Renumbers successive SECTIONS accordingly
- J. Amends the bill's effective date to July 1, 2020.
- K. Makes miscellaneous technical and nonsubstantive amendments.

TOMMY WATERS, Chair
Committee on Public Safety and Welfare